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MONTANA LEGISLATIVE HISTORY

Chapter 506 1999

Bill H 151 S _____ Original bill & history ✓ C

H. Committee on Natural Resources			S. Committee on Natural Resources		
Hearing Date(s)	1/20	✓ C	Hearing Date(s)	4/7	✓ C
	3/26	✓ C			C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ___ Yes ✓ No

Committee _____ Report _____

MORE THAN A 30-DAY SANCTION FOR DEFENDANTS WHO HAVE VIOLATED CONDITIONS OF PROBATION; PROVIDING FOR A PROBATION VIOLATOR PRISON DIVERSION PROGRAM; SPECIFYING THAT AN ONSITE HEARING IS NOT REQUIRED IF A DEFENDANT HAS BEEN CHARGED WITH A VIOLATION OF THE LAW; ESTABLISHING A $360 A YEAR MAXIMUM SUPERVISORY FEE PAYABLE BY A PROBATIONER OR PAROLEE; ALLOWING THE IMPOSITION OF A SUSPENDED SENTENCE UPON SUCCESSFUL COMPLETION OF THE BOOT CAMP INCARCERATION PROGRAM; CHANGING THE ELIGIBILITY REQUIREMENTS FOR PARTICIPATION IN THE BOOT CAMP INCARCERATION PROGRAM; AMENDING SECTIONS 46-18-201, 46-23-1011, 46-23-1012, 46-23-1023, 46-23-1024, 46-23-1031, 53-30-401, AND 53-30-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2095

506 *(House Bill No. 158; Ohs)* AMENDING THE MONTANA UNDERGROUND STORAGE TANK INSTALLER LICENSING AND PERMITTING LAW TO INCLUDE TANK INSPECTORS AND AUTHORIZING LICENSURE OF TANK INSPECTORS; AMENDING THE MONTANA UNDERGROUND STORAGE TANK LAW TO REQUIRE UNDERGROUND STORAGE TANK INSPECTIONS; AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO CLOSE CERTAIN UNDERGROUND STORAGE TANKS; CREATING A LIEN IN FAVOR OF THE STATE FOR COSTS INCURRED IN CLOSING A TANK; INCREASING THE FEE FOR CERTAIN UNDERGROUND STORAGE TANKS; AMENDING SECTIONS 75-11-201, 75-11-202, 75-11-203, 75-11-204, 75-11-211, 75-11-212, 75-11-218, 75-11-223, 75-11-504, 75-11-505, AND 75-11-512, MCA; AND PROVIDING EFFECTIVE DATES 2103

507 *(House Bill No. 183; Dale)* GENERALLY REVISING THE OPENCUT MINING ACT AND THE METAL MINE RECLAMATION LAWS; TRANSFERRING THE REGULATION OF SOIL AND PEAT MINING TO THE OPENCUT MINING ACT; REGULATING PHOSPHATE MINING UNDER THE METAL MINE RECLAMATION LAWS; CLARIFYING DREDGE OPERATION EXEMPTIONS; LIMITING THE USE OF MERCURY AND ORE-PROCESSING REAGENTS AND SOLVENTS BY METAL MINERS; MODIFYING THE DEFINITION OF "PLACER DEPOSIT"; AUTHORIZING THE DEPARTMENT TO REQUIRE RECLAMATION OF CERTAIN METAL MINES AFTER 5 YEARS OF INACTIVITY; REQUIRING ISSUANCE OF SUMMONS AND SERVICE OF PROCESS WITHIN 60 DAYS AFTER FILING OF LEGAL ACTIONS SEEKING REVIEW OF CERTAIN DEPARTMENT DECISIONS; MODIFYING METAL MINE BONDING AND PUBLIC PARTICIPATION PROVISIONS AND OPENCUT MINE BONDING PROVISIONS; LIMITING THE PURPOSES OF THE OPENCUT MINE REGULATIONS; MODIFYING OPENCUT PERMITTING THRESHOLDS; REQUIRING A COMPLETE OPENCUT RECLAMATION PLAN AT THE TIME OF APPLICATION; INCREASING ANNUAL REPORTING REQUIREMENTS; AMENDING SECTIONS 82-4-303, 82-4-305, 82-4-310, 82-4-335, 82-4-338, 82-4-341, 82-4-349, 82-4-402, 82-4-403, 82-4-405, 82-4-422, 82-4-423, 82-4-427, 82-4-431, 82-4-432, 82-4-433, 82-4-434, AND 82-4-441, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES 2111

508 *(House Bill No. 185; Menahan)* PROVIDING FOR A DETENTION CENTER INSPECTION PROGRAM; REQUIRING DETENTION CENTERS AND HOLDING FACILITIES TO COMPLY WITH THE PROGRAM; PROVIDING THE BOARD OF CRIME CONTROL

HB 157 Introduced by Squires *LC0365 Drafter: Maly*

Establish the Montana Low-Income Motor Vehicle Casualty Insurance Association;...

By Request of State Auditor

12/23	Introduced		
1/04	1st Reading		
1/04	Referred to Business and Labor		
1/04	Fiscal Note Requested		
1/07	Rereferred to Human Services		
1/11	Fiscal Note Received		
1/12	Fiscal Note Signed		
1/13	Fiscal Note Printed		
1/20	Hearing		
1/27	Tabled in Committee		
3/01	Missed Deadline for General Bill Transmittal		

HB 158 Introduced by Ohs *LC0215 Drafter: Mitchell*

Amend the Montana Underground Storage Tank Installer Licensing and Permitting Law to Include Tank Inspectors and Authorizing Licensure of Tank Inspectors;...

By Request of Department of Environmental Quality

12/23	Introduced		
1/04	1st Reading		
1/04	Referred to Natural Resources		
1/04	Fiscal Note Requested		
1/11	Fiscal Note Received		
1/13	Fiscal Note Signed		
1/13	Fiscal Note Printed		
1/20	Hearing		
2/02	Tabled in Committee		
3/29	Taken from Table in Committee		
3/29	Committee Executive Action--Bill Passed as Amended	15	5
3/29	Committee Report--Bill Passed as Amended		
3/31	2nd Reading Passed	71	28
4/01	3rd Reading Passed	76	22
	Transmitted to Senate		
4/06	Referred to Natural Resources		
4/07	Hearing		
4/08	Committee Executive Action--Bill Concurred as Amended	8	2
4/08	Committee Report--Bill Concurred as Amended		
4/09	2nd Reading Concurred	36	13
4/10	3rd Reading Concurred	42	8
	Returned to House with Amendments		
4/15	2nd Reading Senate Amendments Concurred	73	25
4/16	3rd Reading Passed as Amended by Senate	75	21
4/16	Sent to Enrolling		
4/19	Returned from Enrolling		
4/20	Signed by Speaker		
4/21	Signed by President		
4/22	Transmitted to Governor		
4/28	Signed by Governor		

4/29 Chapter Number Assigned
Chapter Number 506
Effective Date: 4/28/1999 - Sections 1-11 and 13-16
Effective Date: 1/01/2000 - Section 12

HB 159 Introduced by Ohs *LC0817 Drafter: Mitchell*

Establish a New Fee for Underground Storage Tank Inspector License Applications and Examinations;...

By Request of Department of Environmental Quality

12/23 Introduced
1/04 1st Reading
1/04 Referred to Natural Resources
1/20 Hearing
2/02 Tabled in Committee
3/31 Missed Deadline for Revenue Bill Transmittal

HB 160 Introduced by Ohs *LC0818 Drafter: Mitchell*

Establish a New Fee for the Annual Renewal of Underground Storage Tank Inspector Licenses;...

By Request of Department of Environmental Quality

12/23 Introduced
1/04 1st Reading
1/04 Referred to Natural Resources
1/07 Fiscal Note Requested
1/12 Fiscal Note Received
1/13 Fiscal Note Printed
1/20 Hearing
2/02 Tabled in Committee
3/31 Missed Deadline for Revenue Bill Transmittal

HB 161 Introduced by Ohs *LC0819 Drafter: Mitchell*

Establish a New Fee for the Production and Distribution of Study Guides for Underground Storage Tank Inspector Licensees;...

By Request of Department of Environmental Quality

12/23 Introduced
1/04 1st Reading
1/04 Referred to Natural Resources
1/07 Fiscal Note Requested
1/12 Fiscal Note Received
1/13 Fiscal Note Printed
1/20 Hearing
2/02 Tabled in Committee
3/31 Missed Deadline for Revenue Bill Transmittal

HB 162 Introduced by Ohs *LC0820 Drafter: Mitchell*

Establish a New Fee for the Reexamination of Applicants for Underground Storage Tank Inspector Licenses;...

HOUSE BILL NO. 158

INTRODUCED BY OHS K

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA UNDERGROUND STORAGE TANK INSTALLER LICENSING AND PERMITTING LAW TO INCLUDE TANK INSPECTORS AND AUTHORIZING LICENSURE OF TANK INSPECTORS; AMENDING THE MONTANA UNDERGROUND STORAGE TANK LAW TO REQUIRE UNDERGROUND STORAGE TANK INSPECTIONS; AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO CLOSE CERTAIN UNDERGROUND STORAGE TANKS; CREATING A LIEN IN FAVOR OF THE STATE FOR COSTS INCURRED IN CLOSING A TANK; INCREASING THE FEE FOR UNDERGROUND STORAGE TANKS; AMENDING SECTIONS 75-11-201, 75-11-202, 75-11-203, 75-11-204, 75-11-211, 75-11-218, 75-11-223, 75-11-504, 75-11-505, AND 75-11-512, MCA; PROVIDING A CONTINGENT VOIDNESS PROVISION; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-11-201, MCA, is amended to read:

"**75-11-201. Short title.** This part may be cited as the "Montana Underground Storage Tank Installer and Inspector Licensing and Permitting Act"."

Section 2. Section 75-11-202, MCA, is amended to read:

"**75-11-202. Findings and purpose.** (1) Leaking underground storage tank systems have been identified as a significant source of underground contamination and as a potential hazard for fire and explosion. Government and industry studies show that a major cause of leaking underground storage tanks is improper installation or closure. Proper installation, ~~or~~ closure, and inspection ~~requires~~ require specialized knowledge, training, and experience.

(2) To protect the health of Montana citizens and the quality of state waters and other natural resources, it is the intent of the legislature to require permits for the installation or closure of underground storage tank systems; to limit the conduct of these activities to persons with demonstrated competence, training, and experience; and to ~~assess fees to support state and local administration of~~ provide for

permitting, licensing, and inspection activities."

Section 3. Section 75-11-203, MCA, is amended to read:

"**75-11-203. Definitions.** As used in this part, unless the context requires otherwise, the followin definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Closure" or "to close" means the process of properly removing or filling in place a underground storage tank that is no longer in service.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Inspection" means activities to inspect all or part of an underground storage tank syster including records relating to installation, operation, maintenance, and closure to determine complianc with applicable laws and rules relating to operation and maintenance.

(5) "Inspector" means an individual who performs inspections of underground storage tan systems.

~~(4)~~(6) (a) "Installation" or "to install" means the placement of an underground storage tan system, including excavation, tank placement, backfilling, and piping of underground portions of th underground storage tank system that store or convey regulated substances. Installation includes repa or modification of an underground storage tank system through such means as tank relining or the repa or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems. Installatio also means installation, repair, or modification of a leak detection device that is external to and nc attached to the underground storage tank system and the installation, repair, or modification of a cathodi protection system.

(b) The terms do not include the process of conducting a precision (tightness) test to establis the integrity of the underground storage tank system.

~~(5)~~(7) "Installer" means an individual who installs or closes underground storage tank systems

~~(6)~~(8) "License" means a license issued by the department under 75-11-204 or 75-11-210 t conduct the inspection, installation, or closure of underground storage tank systems ~~and the installatio of leak detection devices or cathodic protection systems~~.

(9) "Licensed inspector" means an individual who holds a valid underground storage tank syster inspector license.

~~(7)~~(10) "Licensed installer" means an individual who holds a valid underground storage tank system installer license.

~~(8)~~(11) "Operator" means a person in control of or having responsibility for the operation, maintenance, or management of an underground storage tank system.

~~(9)~~(12) "Owner" means a person who owns an underground storage tank system used for the storage, use, or dispensing of regulated substances.

~~(10)~~(13) "Person" means an individual, firm, trust, estate, partnership, company, association, corporation (whether organized for profit or not), city, town, local governmental entity, or any other governmental or private entity.

~~(11)~~(14) "Regulated substance" means a regulated substance as defined in 75-11-503.

~~(12)~~(15) "Underground storage tank" or "underground storage tank system" means an underground storage tank, as defined in 75-11-503, and, for purposes of this part, includes ~~a leak detection device that is external to and not attached to~~ ancillary equipment designed to prevent, detect, or contain a release from an underground storage tank system."

Section 4. Section 75-11-204, MCA, is amended to read:

"**75-11-204. Rulemaking authority.** The department may adopt rules governing the installation and closure of underground storage tank systems and rules providing for the inspection of underground storage tank systems. Rules may include but are not limited to the following:

(1) the requirements for issuance, denial, renewal, modification, suspension, and revocation of permits for the installation and closure of underground storage tank systems;

(2) the requirements for issuance, denial, renewal, modification, suspension, and revocation of licenses for underground storage tank system installers and inspectors. The license for inspectors must be separate from the license for installers~~;~~.

(3) the requirements for examination and training of underground storage tank system installers and inspectors;

(4) the requirements for qualifications of inspectors, use of inspectors, and methods for conducting an inspection. The department shall adopt separate qualifications for installers and inspectors~~;~~.

(5) a schedule of fees for obtaining licenses and license renewals by underground storage tank system installers and inspectors;

(6) a schedule of fees for the review of applications for underground storage tank system permits;

(7) a schedule of fees for inspection of installations or closures; and

(8) the mechanism for remittance of inspection or permitting fees to local governments."

Section 5. Section 75-11-204, MCA, is amended to read:

"**75-11-204. Rulemaking authority.** The department may adopt rules governing the installation and closure of underground storage tank systems and rules providing for the inspection of underground storage tank systems. Rules may include but are not limited to the following:

(1) the requirements for issuance, denial, renewal, modification, suspension, and revocation of permits for the installation and closure of underground storage tank systems;

(2) the requirements for issuance, denial, renewal, modification, suspension, and revocation of licenses for underground storage tank system installers and inspectors. The license for inspectors must be separate from the license for installers;.

(3) the requirements for examination and training of underground storage tank system installers and inspectors;

(4) the requirements for qualifications of inspectors, use of inspectors, and methods for conducting an inspection. The department shall adopt separate qualifications for installers and inspectors;.

~~(5) a schedule of fees for obtaining licenses and license renewals by underground storage tank system installers;~~

~~(6) a schedule of fees for the review of applications for underground storage tank system permits;~~

~~(7) a schedule of fees for inspection of installations or closures; and~~

~~(8)~~(5) the mechanism for remittance of inspection or permitting fees to local governments."

NEW SECTION. **Section 6. Fees -- tank system installer licenses, permit applications, inspections, and tank inspector licenses.** (1) The fees for obtaining licenses and license renewals for underground storage tank system installers, fees for the review of applications for underground storage tank system permits, and fees for the inspection of underground storage tank system installations or closures are those that were in effect by rule on November 3, 1998.

(2) The fees for the licensing of underground storage tank inspectors are as follows:

(a) inspector license application and examination fee $100

(b) annual license renewal fee $50

(c) actual cost of production and distribution of study guides $175

(d) reexamination fee $35

(e) duplicate license fee $10

Section 7. Section 75-11-211, MCA, is amended to read:

"**75-11-211. Denial, modification, suspension, or revocation of license -- grounds.** (1) The department may deny, modify, condition, suspend, or revoke a license if the installer:

(a) fails to achieve a passing grade on a written examination;

(b) fails to pay a license fee;

(c) commits fraud or deceit with respect to the license or permit application submitted under this part;

(d) has had suspended or revoked:

(i) a license issued under this part; or

(ii) a similar license ~~suspended or revoked~~ in another state or territory; or

(e) violates any state or federal law, rule, permit, or order relating to the installation or closure of an underground storage tank system.

(2) If the department modifies, conditions, suspends, or revokes a license, it shall inform the applicant or license holder in writing of the reason for the action. The installer may request a hearing before the board. If the board grants a hearing, the hearing must be held in accordance with the provisions of the Montana Administrative Procedure Act."

Section 8. Section 75-11-218, MCA, is amended to read:

"**75-11-218. Administrative enforcement.** (1) When the department believes that a person has violated this part, a rule adopted under this part, or a permit provision, it may serve written notice of the violation on the person or the person's agent. The notice must specify the alleged violation and the facts that constitute the alleged violation. The notice may include an order to provide information pertaining to the installation, ~~or~~ closure, or inspection, or an order to take necessary corrective action within a reasonable time as stated in the order. ~~The notice and order may be signed and served by a department inspector if it is personally given to the person or to the person's agent.~~ Every ~~other~~ notice and order must

be signed by the director of the department or the director's deputy and must be served by certified mail upon the person or the person's agent. The order becomes final unless, within 30 days after the notice is served, the person requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, pursuant to a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the board finds that a violation has not occurred, it shall rescind the department's order.

(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice and answer the charges described in the notice of violation; or

(b) initiate action under 75-11-219, 75-11-223, or 75-11-224.

(4) This section does not prevent the board or department from attempting to obtain voluntary compliance through issuance of a warning, a conference, or any other appropriate administrative or judicial means."

Section 9. Section 75-11-223, MCA, is amended to read:

"**75-11-223. Civil penalties.** (1) Any person who violates any provision of this part, a rule adopted under this part, or an order of the department or the board is subject to a civil penalty not to exceed $10,000 per violation. If an installer or an inspector who is an employee is in violation, the employer of that installer or that inspector is the entity that is subject to the provisions of this section unless the violation is the result of a grossly negligent or willful act. Each day of violation of this part, a rule adopted under this part, or an order constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or terms of a license or permit by injunction or other appropriate remedy; or

(b) action under 75-11-224."

NEW SECTION. **Section 10. Licensing of inspectors -- interim licenses -- regular licenses.** (1) The department shall grant an inspector license if the inspector demonstrates competency and experience in the inspection of underground storage tank systems, passes a written examination conducted by the department or by an agency or person authorized by the department to give the examination, and pays the license fee.

(2) The department or an agency or person authorized by the department to give the examination shall conduct written examinations for the purpose of qualifying individuals to receive an underground storage tank system inspector license. The department shall provide public notice of the date, time, and location of the examination.

(3) An underground storage tank system inspector license is valid for a period not to exceed 3 years and is subject to periodic renewal as prescribed by department rule.

(4) As a condition of renewal, the department may require that an inspector demonstrate continuing competency in the regulatory requirements applicable to operation and maintenance of underground storage tank systems.

(5) An inspector need not be a Montana resident to qualify for a license.

NEW SECTION. **Section 11. Denial, modification, suspension, or revocation of inspector license -- grounds.** (1) The department may deny, modify, condition, suspend, or revoke a license if the inspector:

(a) fails to achieve a passing grade on a written examination;

(b) fails to pay the license fee imposed under this part;

(c) commits fraud or deceit with respect to the license application or an inspection report submitted to the department;

(d) has had suspended or revoked:

(i) a license issued under this part; or

(ii) a similar license in another state or territory; or

(e) violates any state or federal law, rule, permit, or order relating to the inspection of an

underground storage tank system.

(2) If the department modifies, conditions, suspends, or revokes a license, it shall inform th applicant or license holder in writing of the reason for the action. The applicant or license holder ma request a hearing before the board. If the board grants a hearing, the hearing must be held in accordanc with the provisions of the Montana Administrative Procedure Act.

Section 12. Section 75-11-504, MCA, is amended to read:

"**75-11-504. Powers of department.** (1) The department may:

(a) administer and enforce the provisions of this part, rules implementing this part, and orders an permits issued pursuant to this part;

(b) accept and administer grants from the federal government and from other sources, public an private; ~~and~~

(c) abate public nuisances that affect the public health and welfare or the environment and tha arise from or in connection with the past or present handling or disposal of any regulated substance; an

(d) enter property and permanently close an underground storage tank that:

(i) was in use after November 22, 1989;

(ii) was not permanently closed before December 23, 1998, in accordance with closur requirements established by this part; and

(iii) was neither:

(A) initially installed in accordance with design requirements established pursuant to this part; no

(B) upgraded in accordance with rules adopted pursuant to this part.

(2) The department shall integrate all provisions of this part with other laws administered by th department to avoid unnecessary duplication."

NEW SECTION. **Section 13. Lien.** (1) The costs incurred by the department to close a underground storage tank pursuant to 75-11-504 or 75-11-512 constitute a lien in favor of the state upo all property and rights to the property that belong to the owner or operator.

(2) The lien imposed by this section arises at the time that notice incorporating a description c the property on which the underground storage tank was permanently closed and an identification of th amount of costs is filed with the clerk and recorder of the county in which the real property is locate

A copy of the notice must be served by certified mail upon the property owner.

(3) The costs constituting the lien may be recovered in an action in the district court for the district in which the property is located. This section does not affect the right of the state to bring an action against a person to recover all costs for which that person is liable under this part or any other provision of state or federal law.

(4) The lien must continue until the liability for the costs incurred as a result of the permanent closure of the underground storage tank by the state is satisfied.

(5) Payment of any liens under this section must be deposited in the account from which the costs incurred by the state originated.

NEW SECTION. **Section 14. Inspections -- permits.** (1) The owner or operator of an underground storage tank shall have the tank inspected for compliance with this part at least once annually by an inspector who is licensed pursuant to Title 75, chapter 11, part 2, to perform underground storage tank inspections. The inspector may not be:

(a) the owner or operator of the tank;

(b) an employee of the owner or operator; or

(c) for the first inspection required by this subsection (1) after the installation or modification of the tank:

(i) the installer who installed or modified the tank;

(ii) an employee of the installer who installed or modified the tank;

(iii) an employee of the person whose employee installed or modified the tank; or

(iv) if the person that installed or modified the tank through an installer employee is a corporation or other artificial person, a person that owns or is owned by that artificial person.

(2) The department shall by rule provide requirements for the scope and timing of inspections.

(3) The inspector shall provide the owner or operator with an inspection report that meets the requirements of rules adopted by the department to ensure compliance with this part and rules adopted pursuant to this part.

(4) The owner or operator shall retain the original inspection report and mail a copy to the department.

(5) If the inspection report indicates violations, the owner or operator shall correct the violations

and obtain a followup inspection. Followup inspection reports must be provided to the owner or operato and to the department.

(6) A person may not place a regulated substance in an underground storage tank unless th owner or operator has been issued a valid permit from the department for the tank. Permits must b issued for a term of 1 year. The department may not issue or renew a permit unless the owner o operator has filed with the department an inspection report by a licensed inspector that certifies that th operation and maintenance of the tank was in compliance with this part and rules adopted pursuant t this part on the date of inspection.

Section 15. Section 75-11-505, MCA, is amended to read:

"**75-11-505. Administrative rules.** The department may adopt, amend, or repeal rules for th prevention and correction of leakage from underground storage tanks, including:

(1) reporting by owners and operators;

(2) financial responsibility;

(3) release detection, prevention, and corrective action;

(4) procedures and standards for the issuance and enforcement of permits authorizing the operation of underground storage tanks;

~~(4)~~(5) standards for design, construction, installation, and closure;

~~(5)~~(6) development of a schedule of annual fees, not to exceed ~~$50~~ $100 for a tank over 1,10(gallons and not to exceed ~~$20~~ $40 for a tank 1,100 gallons or less, per tank, for tank ~~notification an~~ ~~permits~~ registration to defray state and local costs of implementing an underground storage tank program. The department may prorate fees to cover periods not equal to 12 months in order to provide staggere scheduling of renewal dates;.

~~(6)~~(7) a penalty schedule and a system for assessment of administrative penalties, notice, an appeals under 75-11-525; and

~~(7)~~(8) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority fo implementation of rules adopted by the department of justice that relate to underground storage tanks."

Section 16. Section 75-11-505, MCA, is amended to read:

"**75-11-505. Administrative rules.** The department may adopt, amend, or repeal rules for the prevention and correction of leakage from underground storage tanks, including:

(1) reporting by owners and operators;

(2) financial responsibility;

(3) release detection, prevention, and corrective action;

(4) procedures and standards for the issuance and enforcement of permits authorizing the operation of underground storage tanks;

~~(4)~~(5) standards for design, construction, installation, and closure;

~~(5) development of a schedule of fees, not to exceed $50 for a tank over 1,100 gallons and not to exceed $20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state and local costs of implementing an underground storage tank program.~~

(6) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals under 75-11-525; and

(7) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks."

NEW SECTION. **Section 17. Underground storage tanks -- annual fees.** (1) The department shall assess annual fees on underground storage tanks for tank registration to defray the state and local costs of implementing an underground storage tank program.

(2) The department may prorate fees to cover periods not equal to 12 months in order to provide staggered scheduling of renewal dates.

(3) The fees assessed in subsection (1) are:

(a) $40 per tank 1,100 gallons or less, and

(b) $100 per tank over 1,100 gallons.

Section 18. Section 75-11-505, MCA, is amended to read:

"**75-11-505. Administrative rules.** The department may adopt, amend, or repeal rules for the prevention and correction of leakage from underground storage tanks, including:

(1) reporting by owners and operators;

(2) financial responsibility;

(3) release detection, prevention, and corrective action;

(4) procedures and standards for the issuance and enforcement of permits authorizing the operation of underground storage tanks;

~~(4)~~(5) standards for design, construction, installation, and closure;

~~(5)~~(6) development of a schedule of fees, not to exceed $50 for a tank over 1,100 gallons and not to exceed $20 for a tank 1,100 gallons or less, per tank, for tank ~~notification and permits~~ registration to defray state and local costs of implementing an underground storage tank program. The department may prorate fees to cover periods not equal to 12 months in order to provide staggered scheduling of renewal dates;.

~~(6)~~(7) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals under 75-11-525; and

~~(7)~~(8) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks."

Section 19. Section 75-11-512, MCA, is amended to read:

"**75-11-512. Administrative enforcement.** (1) When the department believes that a violation of this part or a rule adopted under this part has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part or the rule alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests, in writing, a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board finds that a violation has not occurred, it shall rescind the department's order.

(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board or department, by subpoena or subpoena duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained of or to provide information regarding the alleged violation or its actual or potential impact on the public health and welfare or the environment;

(b) initiate action under 75-11-513, 75-11-514, or 75-11-516; or

(c) assess administrative penalties and issue corrective action orders under 75-11-525.

(4) In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which the witness may be interrogated in a hearing or investigation before the board or the department, the board or department may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district court.

(5) If a person fails to comply with an order issued pursuant to subsection (1) or (3) within the time allowed in the order, the department may enter the property on which the underground storage tank that is in violation is located and temporarily close the tank. If the department finds that permanent closure is necessary to prevent substantial environmental harm or because the owner or operator is unlikely to comply with the order, it may permanently close the tank.

~~(5)~~(6) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means."

NEW SECTION. **Section 20. Codification instruction.** (1) [Sections 6, 10, and 11] are intended to be codified as an integral part of Title 75, chapter 11, part 2, and the provisions of Title 75, chapter 11, part 2, apply to [sections 6, 10, and 11].

(2) [Sections 13, 14, and 17] are intended to be codified as an integral part of Title 75, chapter 11, part 5, and the provisions of Title 75, chapter 11, part 5, apply to [sections 13, 14, and 17].

NEW SECTION. **Section 21. Coordination instruction.** (1) If [LC 817] is submitted to a vote and

is not approved by the electorate, then [section 6(2)(a) of this act] is void.

(2) If [LC 818] is submitted to a vote and is not approved by the electorate, then [section 6(2)(b) of this act] is void.

(3) If [LC 819] is submitted to a vote and is not approved by the electorate, then [section 6(2)(c) of this act] is void.

(4) If [LC 820] is submitted to a vote and is not approved by the electorate, then [section 6(2)(d) of this act] is void.

(5) If [LC 821] is submitted to a vote and is not approved by the electorate, then [section 6(2)(e) of this act] is void.

(6) If [LC 823] is submitted to a vote and is not approved by the electorate, then [section 17(3)(a) of this act] is void.

(7) If [LC 824] is submitted to a vote and is not approved by the electorate, then [section 17(3)(b) of this act] is void.

(8) If both [LC 823 and 824] are submitted to a vote and are not approved by the electorate, then [sections 15, 16, and 17 of this act] are void and [section 18] is effective.

NEW SECTION. **Section 22. Contingent voidness -- effective date.** If Constitutional Initiative No. 75, enacting Article VIII, section 17, of the Montana constitution is declared invalid, then [section 4 and section 15 of this act] are effective and [sections 5, 6, 16, 17, and 18 of this act] are void on the date of the determination of invalidity.

NEW SECTION. **Section 23. Code commissioner instructions.** (1) If any or all of [LC 817, 818, 819, 820, and 821] are submitted to the electorate and approved, they must be codified as one section with each approved act being an appropriate subsection.

(2) If either [LC 823] or [LC 824] or both are submitted to the electorate and approved, they must be codified as one section with each approved act being an appropriate subsection.

NEW SECTION. **Section 24. Effective dates.** (1) [Sections 1 through 13 and 15 through 23 and this section] are effective on passage and approval.

(2) [Section 14] is effective January 1, 2000.

- END -

HOUSE

NATURAL RESOURCES

CHAIR: Tash, Bill

VICE CHAIR: Harper, Hal
Younkin, Cindy

MEMBERS:

Bitney, Rod	Curtiss, Aubyn
Dale, Rick	Eggers, Bill
Erickson, Ron	Ewer, David
Gutsche, Gail	Hurdle, Joan
McGee, Dan	Mood, Douglas
Ohs, Karl	Orr, Scott
Raney, Bob	Story, Bob
Stovall, Jay	Tuss, Carley
Wagner, Doug	

SECRETARY: Thompson, Debbie

LEGISLATIVE STAFF: Everts, Todd

HB 142 SPONSOR: Anderson, Shiell SHORT TITLE: Clarify environmental review for state proposals
BY REQUEST OF: Department Of Natural Resources And Conservation
REFERRED ON: 01/04/1999 HEARD ON: 01/25/1999
EXECUTIVE ACTION: 02/04/1999 Bill Passed as Amended -- VOTE: 12 - 8
FINAL DISPOSITION 04/06/1999 Chapter Number Assigned

HB 158 SPONSOR: Ohs, Karl SHORT TITLE: Revise storage tank inspection and closure law
BY REQUEST OF: Department Of Environmental Quality
REFERRED ON: 01/04/1999 HEARD ON: 01/20/1999
EXECUTIVE ACTION: 03/29/1999 Bill Passed as Amended -- VOTE: 15 - 5
TABLED ON: 02/02/1999
FINAL DISPOSITION 04/29/1999 Chapter Number Assigned

HB 159 SPONSOR: Ohs, Karl SHORT TITLE: Submit underground storage tank inspector fee to vote
BY REQUEST OF: Department Of Environmental Quality
REFERRED ON: 01/04/1999 HEARD ON: 01/20/1999
TABLED ON: 02/02/1999
FINAL DISPOSITION 03/31/1999 (H) Missed Deadline for Revenue Bill Transmittal

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HB 160 SPONSOR: Ohs, Karl SHORT TITLE: Submit fee for renewal of underground tank inspector license to electorate
BY REQUEST OF: Department Of Environmental Quality
REFERRED ON: 01/04/1999 HEARD ON: 01/20/1999
TABLED ON: 02/02/1999
FINAL DISPOSITION 03/31/1999 (H) Missed Deadline for Revenue Bill Transmittal

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HB 161 SPONSOR: Ohs, Karl SHORT TITLE: Submit underground tank inspector exam guide fee to electorate
BY REQUEST OF: Department Of Environmental Quality
REFERRED ON: 01/04/1999 HEARD ON: 01/20/1999
TABLED ON: 02/02/1999
FINAL DISPOSITION 03/31/1999 (H) Missed Deadline for Revenue Bill Transmittal

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on January 20, 1999 at 3:05 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Bill Tash, Chairman (R)
Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Rod Bitney (R)
Rep. Rick Dale (R)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. David Ewer (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. Bob Story (R)
Rep. Jay Stovall (R)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: Rep. Aubyn A. Curtiss (R)

Members Absent: None.

Staff Present: Deb Thompson, Committee Secretary
Kathleen Williams, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: House Bills 158-165, 1/23/1999
Executive Action: HB 120, HB 96

Chairman Tash distributed copies of the Rules of Procedure for members. **EXHIBIT(1)**

HEARING ON HOUSE BILL 158

Sponsor: Rep. Karl Ohs, HD 33, presented the bill. He explained the bill dealt with privatizing the inspection of underground storage tanks.

Proponents: Denise Mills, Remediation Division Administrator for the Department of Environmental Quality, testified in support of the bill. **EXHIBIT(2)** She outlined the bill provisions in her letter. Mills distributed amendments to Section 14. **EXHIBIT(3)**

Steve Wade, representing the Burlington Northern and Santa Fe Railroad, discussed his viewpoint. ***{Tape : 1; Side : A; Approx. Time Counter : 16.9}*** He pointed out concerns regarding third party inspections and distributed a proposed amendment. **EXHIBIT(4)** The second amendment he distributed dealt with an owner or operator's right to bring an action to court. **EXHIBIT(5)**

Ronna Alexander, Montana Petroleum Distributer Association, spoke for the bill. She said the concept of third party certification was accepted in the industry.

Peter Nielsen, representing the Missoula City County Health Department, spoke in support. He described the inspection process. He had been involved with the department of local government that did the inspections since 1991. He described the good working relationship with companies in the field. Their department helped companies through the compliance process and were a local resource to help them solve problems. This was why there was an advantage to having local oversight regarding local regulations and local zoning regulations where they could catch problems when they were small. This saves time and money, protects the environment and public health. He opposed duplication which would increase cost to the facilities by more than doubling the fees to the facility. Presently, the city-county charges $25 an hour. Private consultants would charge $300-$400 for the same work. He pointed out that the Department of Environmental Quality did not consult with local government agencies regarding their concerns. He distributed letters of designation with local government units **EXHIBIT(6)** and proposed amendments from the Missoula City County Health Department **EXHIBIT(7)**. Nielsen distributed a newspaper article **EXHIBIT(8)**.

Ann Hedges, representing the Montana Environmental Information Center, stressed her concerns regarding conflicts of interest. ***{Tape : 1; Side : A; Approx. Time Counter : 31.8}***

Opponents: None

Questions from Committee Members and Responses: Rep. Younkin asked Simonich about the department rule making authority rather than the board. Simonich responded that under the Underground Tank Program the department has the rule making authority. He apologized to Missoula County for not responding to their local government concerns. He explained they currently have 15 inspectors that perform inspection which was not enough for statewide coverage. He pointed out there should be no requirement to tell private businesses who they should use. He suggested that third party inspectors should be audited and when a license was issued for tank inspection or removal the department should be notified.

Rep. Erickson asked if the department supported the amendment which would allow certain counties, that want to continue to do the work they have been doing, to continue to do inspections. Nielsen replied he would not support that because it puts tank owners in some counties in a situation where they are required to go to a particular county rather than having their option of bringing in a private inspector. This would allow tank owners in any other county to utilize the market place and bring in a competent inspector of their choice.

Rep. Raney asked if there were other examples where private enterprise were used to do government inspections. Simonich replied that there were times their own agency used the private sector for monitoring or analyzing reports. He cited an example of vehicle inspections in Utah that used private inspectors to perform government inspections. He commented on the potential conflict between an installer and an inspector. He said it was appropriate that the person who installed the tank not inspect it. Inspections include such things as inventory control, annual tank tightness test, and a variety of pieces besides the operation of the facility. The original installer would not have a reason to inspect those things on an annual basis.

Rep. Dale asked Mr. Nielsen if he was licensed as a tank inspector statewide. Nielsen replied his agreement only covered Missoula County. Rep. Dale asked if the bill would allow an expansion of his license. Mills replied that it would. Rep. Dale asked if the same license covered both the private sector and counties. Mills replied that it required the same qualifications. ***{Tape : 1; Side : A; Approx. Time Counter : 48}***

Rep. Tuss asked Mr. Simonich whether the 15 active inspectors were able to distribute their work statewide. Simonich replied he had a list that indicated, in each county, the number of facilities in the county and inspections by county.

Rep. Ewer asked Mr. Nielsen if he would remain licensed under the bill and if his qualifications were the same as a state license. Nielsen replied the initial fee would need to be paid. The requirements wouldn't change and would be no different standard than the private sector.

Nielsen pointed out this bill would be duplicating inspections. He asked why would the Legislature fund reimbursement for the inspections if private inspectors were doing it. Why would they fund two inspections? He said what he saw as occurring was the county inspectors were being phased out.

Rep. Ewer asked what was wrong with being phased out. Nielsen replied one thing that was wrong was there was no agent of the state or agent of local government doing the inspections. Third party inspectors were not knowledgeable about the local needs. Local county inspectors offer local resources and do a better job working together with the state, than the state working alone without the local county. Rep. Ewer said there were two positions, one: let the marketplace allow for competition to have inspectors or two: have a regulatory agent that is disinterested, like government. Nielsen said there was a little more to it. He pointed out some counties don't do inspections and there should be someone available to do inspections. Counties can be trained to be a local resource for the community, are able to do the oversight work, and should have the opportunity to do those inspections. They would prefer to be given the option to conduct the inspection.

Rep. Story asked about uniformity of inspections. Mills replied there was no formal follow up but it was a contract that they work by. The program is audited and there are spot checks made on inspections.

{Tape : 1; Side : B}
Rep. Bitney asked for an explanation of the test procedure. Nielsen described the various tank inspection procedures. ***{Tape : 1; Side : B; Approx. Time Counter : 3.9 - 6.7}***

Rep. Raney asked if there would be enough tank inspectors to step forward to fulfill the needs. Simonich replied the market determines the price. This was something required to be done by the state creating a niche or an opportunity for a number of environmental consulting firms to step in and fill it. If there

is a lack of private inspectors then there are two options, to fall back on, an individual from the department to inspect or if private inspectors could not do it, get the local governments to do it.

Rep. Raney pointed out the fear to small businesses was the cost which could range from $250-$700 per inspection. He suggested a control be initiated over the maximum charge. Simonich replied it was not in the best interest of the department to set prices.

Rep. Tuss asked for an explanation of the need for privatization since the tanks were covered up. Nielsen responded that no one knew the thousands of dollars it cost in tank leaks, dispenser leaks, drive-aways, overfills, which collectively add up. Rep. Tuss asked if a two year requirement for an inspection was protective. Nielsen replied it was protective except for specific instances. Most small systems had gone out of business. He said two years was adequate.

Closing by Sponsor: Rep. Ohs closed. He pointed out times had changed and it was important to make sure tanks were not leaking. Tanks that were not inspected would require either more FTE or privatization. There were more than 1500 tank inspections a year and local government could not handle it.

HEARING ON HOUSE BILLS 159-165

Sponsor: Rep. Karl Ohs, HD 33, presented a series of house bills that were all related to increased fees to support programs in the department as a result of CI-75. ***{Tape : 1; Side : B; Approx. Time Counter : 23.7}*** He explained HB 159 covered the application for tank inspectors; HB 160 put the renewal fee at $50; HB 161 dealt with the study guide; HB 162 was the re-examination fee of $35; HB 163 was the duplicate license fee of $10; HB 164 increased the fee for registering certain underground tanks from $20 to $40; and HB 165 increased the registration fee for tanks over 1100 gallons from $50 to $100. He said the fiscal note reflected the cost of printing the election voter guide.

Proponents: None

Informational Testimony: Denise Mills, Environmental Quality, explained the fees were separate ballot issues. The fees were required to run the program.

Opponents: Peter Nielsen, from Missoula City County Health Department, pointed out the need to address HB 159 inspection license to exempt local governments from the fee.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on March 26, 1999 at 3:25 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Bill Tash, Chairman (R)
Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Rod Bitney (R)
Rep. Aubyn A. Curtiss (R)
Rep. Rick Dale (R)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. Bob Story (R)
Rep. Jay Stovall (R)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: Rep. David Ewer (D)

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Deb Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: None
Executive Action: HB 158, SB 345

Chairman Tash announced an April 7 visit to the Natural Resources Information Center at the Montana State Library. He said there would be a committee oversight meeting regarding SB 383, the cluster development bill.

EXECUTIVE ACTION ON HOUSE BILL 158

Rep. Karl Ohs, HD 33, presented a subcommittee report regarding HB 158 and the underground storage tanks bill. He presented amendments and a grey bill. **EXHIBIT(1) EXHIBIT(2)** He said the white copy the subcommittee had agreed on, the grey copy included those amendments. **EXHIBIT(3)** ***{Tape : 1; Side : A; Approx. Time Counter : 3.1 - 6.8}***

Larry Mitchell discussed the amendments that had been agreed to by the subcommittee. ***{Tape : 1; Side : A; Approx. Time Counter : 6.8 - 14.8}***

Committee Discussion: ***{Tape : 1; Side : A; Approx. Time Counter : 14.8 - 30.7}***

The question was called on the grey amendments. The motion **PASSED** unanimously. ***{Tape : 1; Side : A; Approx. Time Counter : 30.7 - 31.3}***

Larry Mitchell discussed the conflicts from the previous amendment. **EXHIBIT(4)** ***{Tape : 1; Side : A; Approx. Time Counter : 31.3 - 35.9}***

Rep. Erickson **MOVED TO RECONSIDER** the bill. He explained the subcommittee had lots of discussion on the issue. The question was called. The motion **PASSED** unanimously. ***{Tape : 1; Side : A; Approx. Time Counter : 35.9 - 40.4}***

Rep. Ohs **MOVED DO PASS AS AMENDED.** The motion **PASSED** 15-5 with Reps. Hurdle, Curtiss, Orr, Wagner and McGee voting no. ***{Tape : 1; Side : A; Approx. Time Counter : 40.4 - 42.2}***

EXECUTIVE ACTION ON SENATE BILL 345

Rep. Curtis **MOVED DO CONCUR** SB 345. Rep. Dale presented an amendment, prepared by Greg Petesch, to address committee concerns. **EXHIBIT(5)** ***{Tape : 1; Side : A; Approx. Time Counter : 42.2 - 54}***

SENATE

NATURAL RESOURCES

CHAIR: Crismore, William **VICE CHAIR: Mahlum, Dale**

MEMBERS:

Cocchiarella, Vicki	**Cole, Mack**
Grosfield, Lorents	**Keating, Tom**
McCarthy, Bea	**Miller, Ken**
Roush, Glenn	**Taylor, Mike**
Wilson, Bill	

SECRETARY: Scheel, Jyl

LEGISLATIVE STAFF: Mitchell, Larry

HB 113 SPONSOR: Younkin, Cindy SHORT TITLE: Revise hazardous waste act
BY REQUEST OF: Department Of Environmental Quality
REFERRED ON: 02/01/1999 HEARD ON: 03/05/1999
EXECUTIVE ACTION: 03/08/1999 Bill Concurred as Amended -- VOTE: 10 - 0
FINAL DISPOSITION 04/23/1999 Chapter Number Assigned

HB 120 SPONSOR: Brown, Roy SHORT TITLE: Revise reclamation & development grant fund use
BY REQUEST OF: Department Of Natural Resources And Conservation
REFERRED ON: 02/01/1999 HEARD ON: 03/03/1999
EXECUTIVE ACTION: 03/04/1999 Bill Concurred -- VOTE: 9 - 0
FINAL DISPOSITION 03/16/1999 Chapter Number Assigned

HB 142 SPONSOR: Anderson, Shiell SHORT TITLE: Clarify environmental review for state proposals
BY REQUEST OF: Department Of Natural Resources And Conservation
REFERRED ON: 02/10/1999 HEARD ON: 03/03/1999
EXECUTIVE ACTION: 03/11/1999 Bill Concurred -- VOTE: 6 - 5
FINAL DISPOSITION 04/06/1999 Chapter Number Assigned

HB 158 SPONSOR: Ohs, Karl SHORT TITLE: Revise storage tank inspection and closure law
BY REQUEST OF: Department Of Environmental Quality
REFERRED ON: 04/06/1999 HEARD ON: 04/07/1999
EXECUTIVE ACTION: 04/08/1999 Bill Concurred as Amended -- VOTE: 8 - 2
FINAL DISPOSITION 04/29/1999 Chapter Number Assigned

HB 183 SPONSOR: Dale, Rick SHORT TITLE: Generally revise opencut mining act & metal mine reclamation laws
BY REQUEST OF: Department Of Environmental Quality
REFERRED ON: 02/23/1999 HEARD ON: 03/15/1999
EXECUTIVE ACTION: 03/27/1999 Bill Concurred as Amended -- VOTE: 11 - 0
FINAL DISPOSITION 04/29/1999 Chapter Number Assigned

HB 248 SPONSOR: Harrington, Dan SHORT TITLE: Use of municipal water or sewer utility is not a beneficial use
REFERRED ON: 02/22/1999
FINAL DISPOSITION 04/14/1999 (S) 2nd Reading Indefinitely Postponed; Vote: 47 - 2

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE,** on April 7, 1999 at 3:30 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: Sen. Ken Miller (R)

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 158, 4/5/1999
Executive Action: HB 158

HEARING ON HB 158

Sponsor: **REPRESENTATIVE KARL OHS, HD 33, HARRISON**

Proponents:

Denise Mills, Remediation Division Manager, Department of Environmental Quality
Ronna Alexander, Montana Petroleum Marketers Association

Opponents:

Linda Stoll, Montana Local Health Officers Group

Opening Statement by Sponsor:

REPRESENTATIVE KARL OHS, HD 33, HARRISON, presented **HB 158** which amends the Underground Storage Tanks Program and privatizes the inspection program. There is a feeling that the inspection of the underground storage tanks is not what it should be. The Department will set the criteria for private entrepreneurs to become underground storage tank inspectors. It would probably be the same people who do the installation inspection in many cases, but not necessarily. If the owner has been negligent, he does not qualify for the petroleum fund to help clean up the problem. The inspection is something that needs to be reviewed and decide what is the proper way to ensure it is done.

Proponents' Testimony:

Denise Mills, Remediation Division Manager, Department of Environmental Quality, spoke in support of the bill as per **EXHIBIT(1).**

Ronna Alexander, Montana Petroleum Marketers Association, stated the Association is supporting **HB 158** in its major conceptual form. She passed out amendments for the committee to review as per **EXHIBIT(2).** The discussions regarding privatizing inspections were not without some concern in the industry. They feel there needs to be scheduled inspections and by having the control over who does it, when they do it, and the link to the eligibility of the petroleum fund, they feel this is probably the right way to go. Currently, inspections are done randomly with some inspected frequently and some quite far apart. This will set a uniform standard for the industry. She then discussed the amendments they proposed.

Opponents' Testimony:

Linda Stoll, Montana Local Health Officers Group, spoke in opposition to the bill and presented testimony on behalf of Peter

Nielsen, Environmental Health Supervisor for the Missoula City-County Health Department as per **EXHIBIT(3).**

Questions from Committee Members and Responses:

SENATOR GROSFIELD questioned if the reason for eliminating Section 12(2) was also to get rid of the limitation on the amount of time local agents can do these inspections? **Ms. Alexander** stated the amendment does do away with the time frame. Industry is saying "privatize us", charge us and let Local Governments have the options to compete with private enterprise like anyone else. **SEN. GROSFIELD** questioned if local agent referred to a Local Government agent? **Ms. Alexander** stated yes.

SEN. GROSFIELD questioned why were they wanting to get rid of Local Government inspectors? **Ms. Mills** stated they envision Local Governments to have a role in this program but it was not their vision they would be inspectors that are still being paid by the Department, they would be paid by the owner if they become licensed like the private inspectors. Through their delegation agreement they have currently been delegating, through contracts and some funding to certain Local Governments, inspection authority. Local Government also does compliance assistance outreach and inspections on removals and installation of underground storage tanks. It is an activity they envision to continue. They have tried to explain to some Local Government representatives that there would still be a role for them. They believe the role to be compliance assistance, education and outreach, oversee or inspect installation and removals of tanks that are being done on a tank permit, and then to help the Department in the oversight of third party inspectors. The Department increased their appropriation for grants to Local Governments in the anticipation they would have a role in the third party inspector oversight activity with the Department. **SEN. GROSIFIELD** stated on page 10, line 25, it says the owner reimburses the local agent for the cost of the inspection but there are no guidelines in that language. **Ms. Mills** stated in the process of conceptualizing the process they felt it would be better for competition to set the rates based on demand rather then have guidelines in statute. **SEN. GROSFIELD** stated the language does not say the price of the inspection needs to be tied necessarily to cost. He questioned if it was the Department's intent not to allow a local agent to conduct inspections after 12/31/2001 as stated on page 10, line 26? **Ms. Mills** stated the intention of the language is that the Local Governments could be licensed and could compete with the private sector but they would not be subsidized from the Department for that activity. This is not intended to bar them after that date from taking up the inspector role for these facilities.

SENATOR COCCHIARELLA questioned what was detailed in an inspection? **Ms. Mills** stated on an operation inspection an inspector would look to see that the record keeping has been done properly like inventory control. They check for proper function of various tank gauges and electrical supplies. There is no internal inspection. **SEN. COCCHIARELLA** questioned the purpose of the two definitions of Inspector on page 2, line 13 and line 29? **Ms. Mills** stated the intent of the definition of a Licensed Inspector on line 29 is someone the Department has examined and certified they are qualified to become an inspector and be issued a license. The definition on line 13 more broadly refers to the Department inspector or Local Government inspectors that might be doing inspections of installations and removal of tanks. There may be some overlap. **SEN. COCCHIARELLA** questioned what in the law says somebody can be an inspector after passing this bill? **Ms. Mills** stated the Department has inspectors on staff and they do delegate to Local Governments right now. In drafting the legislation they did not see the need to change some of the existing language in the law. Page 3, Section 4 of the bill discusses rule making authority where they refer to inspectors rather than licensed inspectors. In the rule making authority they are looking to define the program and use as a mechanism to define what the qualifications need to be, i.e. what the requirements are for an inspection, what kind of reporting is required, etc.

SENATOR COCCHIARELLA stated her concern with the legislation is that privatization for the sake of privatization does not always work. Is the purpose of the bill to get more inspections done or is the purpose to provide private sector inspection jobs? **Ms. Mills** stated this bill does propose to establish the inspection program for private inspectors but it is not a privatization bill. It is an effort to give their program some good integrity in the long run. They have passed the federal deadline and they are looking for a mechanism to have a good source of resources to get that work done.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 42; Comments : None.}

SENATOR COCCHIARELLA stated if the bill says inspections every three years and they are already having them done every two years in Missoula, why would she vote for this bill? If she votes for the bill and the cost of inspections skyrocket, what will she say if she votes for this bill? **Ms. Alexander** stated that is why there has been so much discussion over the entire issue of inspections. The problem is setting a minimum standard for everyone. If the bill is not passed then they are back to no

uniform standard and perhaps people not being in compliance when they think they are, without access to the fund.

SENATOR ROUSH questioned the cost of the inspection and the language on page 10, lines 25 and 26. What does the Department charge for an underground tank inspection now? **Ms. Mills** stated currently they do not charge the facility owner for an inspection except for certain circumstances where they have a permit condition where they need to be on site for an installation and charge $35 per hour for them to be there. When a Local Government does an inspection they are compensated $25 per hour for that inspection. There is no cost of inspection to the owners. This bill, if passed, would require the owners to pay that cost. They believe the owners will benefit from this to protect their businesses, etc. **SEN. ROUSH** questioned how long it took to do an inspection? **Ms. Mills** stated it can range from two to six hours in a day. Most would fall in a range of two hours to a half day. **SEN. ROUSH** asked if they considered soil sampling to be a way to inspect tanks under this proposal? **Ms. Mills** stated they would only use soil sampling if they were going to close a tank. They might decide to close the tank and test the soil around it to see if it was contaminated. There are a variety of ways to check leak detection. One method would be groundwater monitoring wells and they would look at that type of data for facilities set up with that.

SENATOR MAHLUM questioned can an inspector and an installer be the same person and hold two different licenses? **Ms. Mills** stated yes that person could. There is a condition in the legislation that would not allow an installer to inspect his own work at least one year from the time it was installed.

SENATOR MAHLUM questioned if amendment #2 could not be changed to $75 to average it out better? **Ms. Alexander** stated that would probably balance out the math.

SENATOR GROSFIELD questioned the language in Section 12, Subsection 2? **REP. OHS** stated the whole section was written to try to help Missoula. A great deal of time was spent trying to work out this language to allow the Local Governments some time to continue to do their own inspection and slowly transition over to private inspections so the same kind of inspection is going on all over the state. He was under the impression they were in agreement and now today he finds out they are not. His inclination is to take the whole thing out because no matter what is done to try to get along with Local Governments, they say is not good enough. Most of the language is just an attempt to try to transition from the Local Government, giving them two years to

do their own inspection, and then transition to private inspectors.

SEN. GROSFIELD said he thought that was the intent but he does not think that is what the language says. A local agent can do inspections until December 31, 2001, but then on lines 21 and 22 it says they have to be licensed pursuant to Section 9 before they can do inspections from day one, meaning prior to December 31, 2001. That is what it says but he does not think that is the intent. **Mr. Mitchell** stated the way it is written, any inspection done under this new Section 12, has to be conducted by a person licensed to be an inspector and that is described in Section 9 which includes the local agents. **SEN. GROSFIELD** did not think that was what the amendment was supposed to do. He thought it was indicated that you give the local agents, under a delegation of authority agreement with the Department, two years to keep going and after December 31, 2001, they would have to become licensed if they wanted to continue doing inspections. **Mr. Simonich, Director, DEQ**, stated there are Local Government agents currently working under the authority of the Department where they have been delegated and are currently licensed by the Department. The language was drafted such that those counties currently doing that work, under delegation agreements, have licensed inspectors. They were intending that during the interim period when the county or local fire district was doing inspections, their inspector had to be a licensed inspector as well. **SEN. GROSFIELD** stated he did not see a reason to have the amendment at all. **Mr. Simonich** stated the purpose of the amendment is they believe local county governments, whether fire districts or county sanitarians, could opt to do this. Subsection 2 says for those counties where they currently have that program and they want to do it, they are the only ones that can do that inspection for the first two year period. This program becomes effective next January. There is a period through this year where they would put the program together and begin licensing inspectors. The requirement for those inspections start next January and then proceeds to every three years after that. In the first two years, subsection 2 says the owner has to use Local Government if Local Government will do it. If they are not already in the program or the local inspector is not available, then they can go to the private sector. **SEN. GROSFIELD** stated on line 26 should it not say "a local agent may not conduct inspections required by this 'subsection' after December 31, 2001". **Mr. Simonich** stated yes. **SEN. GROSFIELD** questioned the cost and if there were any guidelines or rules for how much can be charged? **Mr. Simonich** stated there are no guidelines. Currently the inspections are done either by the Department or local agents and those are paid for through the

registration fees. They feel fees will be dictated by the marketplace.

SENATOR GROSFIELD questioned why the fees were being doubled? **Mr. Simonich** stated to refer to the chart attached to **Ms. Mills** testimony. Those fees were set many years ago when there were nearly 20,000 tanks in the ground. It generated a lot of fees and they have been working off a fairly large fund balance over the years, however, the fund balance has been going down. There are now about 4000 tanks in the ground and the program is being funded with a much smaller population. The regulatory requirements have not gone away. The money does not just fund Local Government inspections, it funds a good portion of the underground tank program within the Department. Those fees pay the Department and also allow them to reimburse the counties for work. They are looking at trying to step up the inspection program with private inspectors but now they have to be able to license them and provide some oversight. They feel by the end of the next biennium, the fund will be nearly dry if there is not an increase in fees.

SENATOR TAYLOR questioned how three year inspections were arrived at? **Mr. Simnonich** stated we are talking about the tank system and the operation and maintenance of the facility so it includes not just the tank itself. They are looking at narrowing it down enough so they feel confident they are tightening up on the operation and minimizing the opportunities for leaks to the groundwater. Through this they will provide better assurance to the owners that they know the facilities are in compliance and if they do have a leak, they will be eligible to the fund.

SENATOR CRISMORE questioned if this committee amends this bill at this late date and it goes back to the House, is that what you want? **REP. OHS** stated whatever the committee sees fit. He believes there is time and it could be handled in a timely fashion.

Closing by Sponsor:

REPRESENTATIVE KARL OHS, HD 33, HARRISON, stated we have underground storage tanks out there that, currently in most parts of the state, we are not getting the job done that should be done. Even industry would recognize that. We need to do a better job. According to testimony, there are two to three that do an adequate job. Is it fair those one or two stop the rest of the state from doing what needs to be done? The reason for the amendment in Section 12 (2) was to try to satisfy an unhappy Local Government. He understands now there is no way to get them satisfied and feels it should be taken out because we will not

have their support anyway. This is a program that needs to be done. He encouraged the committee's support.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 25; Comments : None.}

EXECUTIVE ACTION ON HB 158

Motion: **SEN. TAYLOR** moved that **HB 158 BE CONCURRED IN.**

Motion: **SEN. TAYLOR** moved that the **ALEXANDER AMENDMENT BE ADOPTED.**

Discussion:

SENATOR GROSFIELD stated the amendment gets rid of Subsection 2 altogether and then does the fee changes. The subsection can be changed today and deal with the fees or just get rid of it. He did not have strong feelings one way or another. He does have some language to suggest if the committee wishes to change it.

SENATOR TAYLOR stated it might be easiest to just strike it out rather than try to amend it.

SENATOR KEATING stated it is going to take some time to get Local Government and private people licensed. If this amendment is not in the bill, it gives Local Government time to make that transition. Locals can still do inspections or they can use private people. It is only two years so why not take the amendment out and go for the transition period. By that time they will have experience, people will know what is there and if it is creating a hardship someplace, that can be corrected. If it is working, they can build on it from there. He suggests taking the amendment out and letting the bill go through as it was. He feels the fees should be cut a little bit.

SENATOR GROSFIELD suggested segregating the amendment and deal with them one at a time.

SENATOR COCCHIARELLA stated she was going to vote against the amendment and if this part of the bill goes, she has to vote against the bill. She asked to hear the language **SEN. GROSFIELD** suggested for fixing subsection 2.

SENATOR CRISMORE asked if subsection 2 is taken out, don't we still have time? **Mr. Mitchell** stated if the first Alexander amendment is accepted, on page 10, subsection 2 would disappear. That means there is no guarantee of work to do these inspections for Local Government units that are currently contracted by the

agency or licensed to do these inspections. Subsection 2 simply allows them an exclusive right for two years, to do these inspections in their jurisdiction, until December 31, 2001. That would disappear with this amendment.

SENATOR GROSFIELD stated on line 25 at the end of the sentence he would add, "...inspection at a fee which must be commensurate with reasonable costs of conducting that inspection". A local agent may not conduct inspections required by this section after December 31, 2001, "unless licensed pursuant to Subsection 9".

Substitute Motion: **SEN. COCCHIARELLA** made a substitute motion to **ADOPT LANGUAGE PROPOSED BY SENATOR GROSFIELD TO AMEND SUBSECTION 2 OF THE NEW SECTION 12.**

Discussion:

SENATOR TAYLOR questioned what is better or worse about **SEN. GROSFIELD'S** proposed language than just striking it altogether? **Mr. Mitchell** stated **SEN. GROSFIELD'S** amendment would allow Local Governments the exclusivity but restrict what they could charge to reasonable costs. It also does not cut them off December 31, 2001. They will have to be licensed in order to conduct any inspection no matter what the date. **Mr. Simonich** stated he feels the amendment goes farther than what **SEN. GROSFIELD** intends by changing the language to say, required by subsection 2 and adding unless licensed pursuant to subsection 9. If you are licensed according to subsection 9 then this subsection still applies after 2001. The subsection specifically says local counties must do it. The effect of the amendment is it will always be the county doing the inspection, no option for the private sector. **SEN. GROSFIELD** said he was correct, that was not what he meant.

Substitute Motion: **SEN. COCCHIARELLA** made a substitute motion to **AMEND THE PREVIOUS AMENDMENT TO DELETE THE WORDS "UNLESS LICENSED PURSUANT TO SECTION 9".**

SENATOR COCCHIARELLA stated she was still very concerned that there is a two year time frame for Local Governments and for private people to come up to speed to do this work.

SENATOR TAYLOR stated he resists the second motion because he does not feel there is a boogy man in here. He feels if the motion is stricken, it will accomplish what needs to be done.

SENATOR MAHLUM stated he feels the perception is there will not be anyone capable of inspecting these until 2001. He bets there are people out there right now, within that narrow field of

installation, who can become inspectors at the present time. He does not feel it is necessary to wait until 2001 to have an inspector.

SENATOR TAYLOR called for the question. **Mr. Mitchell** stated the committee would be voting on the motion on subsection 2 by **SEN. COCCHIARELLA** that says "...inspection at a fee which must be commensurate with the reasonable cost of conducting the inspection. A local agent may not conduct inspections required by the 'subsection' after December 31, 2001."

SENATOR CRISMORE asked if that went farther than what will work for the Department? **Mr. Simonich** said if he was asking if it will go farther than what will work for the Department, he would not say that. If he is asking if it is necessary to keep the amendment in the bill he does not believe it is.

SENATOR KEATING asked is there any place in this bill that if there is not a licensed inspector in an area that the Local Government will do the inspection? **Mr. Simonich** stated nothing in the bill speaks to that. They would anticipate there will be several licensed inspectors around the state. Again, the counties that want to continue to do that kind of work are not concluded otherwise. The county could license their own individual to do that work. **SEN. KEATING** stated that is what he thought he heard in the testimony and why he made the comment that we do not need this amendment at all because the locals can do it. Under the Department's administrative rules, the Board could make the distinction right away that in the transition period anyone that knows how to do this stuff can do it. He does not know where the problem is.

SENATOR MAHLUM stated if subsection 2 is taken out then we are going back to local officials only, right? **SENATOR KEATING** said no, absolutely not. The bill says you have to be a licensed inspector to do it. If subsection 2 is taken out then right away you have to be a licensed inspector. The question is who is going to be a licensed inspector? You say, there is going to be a bunch out there that can be licensed right away. He is saying, if in an area there is not a person licensed to do that, can the locals do it? Yes they can and all they have to do is license their own guy.

Vote: Motion that **HB 158 AMENDMENTS PROPOSED BY SEN. COCCHIARELLA BE ADOPTED failed 3-7** with **Senators Crismore, Mahlum, Cole, Keating, Miller, Roush, and Taylor voting no.**

Vote: Motion that **HB 158 ALEXANDER AMENDMENT #1 BE ADOPTED carried 8-2** with **Senators Cocchiarella and McCarthy voting no.**

Motion: **SEN. TAYLOR** moved that **HB 158 ALEXANDER AMENDMENT #2 BE ADOPTED.**

{Tape : 1; Side : B; Approx. Time Counter : 25 - 45; Comments : None.}

Discussion:

SENATOR TAYLOR stated the fees are cut approximately 25% on one and the other by 33%. It is reduced by about one-third. He feels it is a compromise and is probably acceptable.

SENATOR GROSFIELD questioned how many tanks are there in the 1100 and under category vs. the 1100 and over category? **Jim Hill, DEQ,** stated the tank population is estimated to be about 4,000 tanks. About 3300 - 3400 of which will be greater than 1100 gallons and the remainder of which will be less than 1100 gallons.

SENATOR GROSFIELD stated he did not know why the fees were being raised on the little tanks at all.

Substitute Motion: **SEN. GROSFIELD** made a substitute motion to **LOWER THE FEES ON TANKS 1100 GALLON OR LESS TO $20 AND RAISE THE FEE TO $70 ON THE TANKS 1100 GALLONS OR OVER BE ADOPTED FOR THE ALEXANDER #2 AMENDMENT. Motion carried 10-0.**

Motion/Vote: **SEN. MAHLUM** moved that **HB 158 BE CONCURRED IN AS AMENDED. Motion carried 8-2** by Roll Call Vote with **Senators Cocchiarella and McCarthy voting no. SENATOR GROSFIELD** will carry the bill to the Senate floor.

{Tape : 2; Side : A; Approx. Time Counter : 0 - 6.6; Comments : None.}